UNITED STATES DISTRICT COURT

DISTRICT OF MAINE

UNITED STATES OF AMERICA,	)	
	)	
v.	)	Crim. No. 02-73-B-H
	)	
FRANK ARBOUR,	)	
	)	
Defendant	)	

RECOMMENDED DECISION

This matter is before the court on Frank Arbour's Motion to Suppress Evidence. (Docket No. 24.) I now recommend that the court **DENY** the motion.

Background

On October 19, 2001, agents of the Maine Drug Enforcement Agency and other law enforcement personnel executed a state search warrant at a single family residence located on Route 9 in Chelsea, Maine. The residence was identified as the residence of Roy Dubreil and Frank Arbour. The warrant, signed by a Maine District Court Judge, authorized entry without prior notice. The warrant was executed in that fashion and when agents entered the residence they found Roy Dubreil in the process of discarding a handgun. The search netted thirteen other firearms.

Arbour was not home when the search was conducted. The following day he contacted the MDEA agent working on the case and made arrangements to meet with the agent at the Augusta Police Department. After advising Arbour of his Miranda rights, Arbour waived those rights, and chose to speak to the agent. During the course of the ensuing interview, Arbour allegedly made several incriminating statements. Ultimately Arbour and Dubreil were charged in one indictment with conspiracy to distribute cocaine

and certain firearms offenses, including possession by a prohibited person and possession of stolen firearms. On February 7, 2003, Arbour filed a motion to suppress both the evidence seized and the statements made to law enforcement.

Following a conference with counsel (Docket No. 27), I set the motion to suppress statements for an evidentiary hearing (Docket No. 30). On April 3, 2003, defendant's attorney filed a letter with the clerk indicating he was withdrawing the motion to suppress (Docket No. 33). Both the clerk's office and I believed that the motion was withdrawn in its entirety. However, defendant's counsel contacted the clerk's office on April 29, 2003, to check on the status of the case and at that time we learned that the motion had been withdrawn only in regard to the Miranda issues raised by the interrogation that took place on October 20, 2001. Arbour presses his motion on Fourth Amendment grounds as to the search of the residence. He argues that all physical evidence seized should be suppressed because the affidavit does not contain sufficient facts to support a finding of probable cause and because the officers improperly executed the warrant by failing to knock and announce their presence prior to entry. He also argues that his statements should be suppressed as fruit of the poisonous tree. He agrees, however, that no evidentiary hearing is required under these circumstances and that the court can make the necessary determinations by reviewing the affidavit submitted to the State of Maine judge in support of the premises search warrant.

Discussion

The applicable standard is whether the information found within the four corners of the affidavit presented to the state court judge was sufficient to support a finding of probable cause that a crime was committed and that evidence of the commission of that

crime will be found at the place to be searched. United States v. Schaefer, 87 F.3d 562, 565 (1st Cir. 1996). The issuing state court judge's determination of probable cause is based upon the totality of the circumstances put forth in the affidavit and it is entitled to "great deference by reviewing courts." Illinois v. Gates, 462 U.S. 213, 236 (1983).

The affidavit in this case was based upon corroborated information from a confidential informant. The confidential informant told the affiant that s/he had been buying approximately one gram of cocaine weekly from Dubreil for about two months and that those purchases had taken place at the subject residence. (Search Warrant Affidavit, "SWA," Exhibit A to Docket No. 25, ¶ 4.) Within a week of the search warrant the confidential informant had seen 5 ounces of cocaine and drug paraphernalia such as scales and records at the residence and had witnessed Arbour and Dubreil distribute cocaine to another individual. (Id., ¶¶ 3, 7.) The confidential informant also indicated that Arbour and Dubreil had attempted, through a third individual, to collect an alleged drug debt from him relating to cocaine recently stolen from the subject residence. (Id., ¶¶ 5, 6.)

The affiant was able to corroborate the information provided by this confidential informant through a consensually recorded conversation involving the confidential informant and both Arbour and Dubreil. (Id., ¶ 9.) The confidential informant made a delivery of partial payment for the alleged drug debt giving rise to the context for the recorded statement. (Id., ¶ 8.) During that conversation Arbour and Dubreil indicated the confidential informant was being held responsible for half the value of the drugs allegedly stolen by his/her sister. (Id., ¶ 11.) Dubreil also confirmed that the individual who had attempted to collect the drug debt had been originally sent by the defendants.

(Id., ¶ 10.) Arbour also boasted about the quality and the cost of the cocaine he bought. (Id., ¶ 11.) Additionally, the affiant indicated that law enforcement had received an anonymous telephone call in May 2001, indicating that Arbour and Dubreil were dealing cocaine from the residence in Chelsea, Maine. (Id., ¶ 13.)

The issuing state court judge was called upon "simply to make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit . . . there [was] a fair probability that contraband or evidence of a crime [would] be found in a particular place." Gates, 462 U.S. at 238; accord United States v. Brunette, 256 F.3d 14, 16 (1st Cir. 2001) (quoting this passage from Gates). Given the degree of detail provided by the confidential informant based upon his obvious first hand knowledge and given the corroboration obtained through the recorded conversation, the issuing judge's probable cause determination is beyond reproach.

The second issue raised by this motion related to the manner of execution. The affiant sought and obtained a so-called "no knock" warrant. It is undisputed that the warrant was executed sans the normal knock and announce procedures, based upon the executing officers' alleged fears for their safety and their concerns about the potential destruction of evidence. When a court is called upon to determine the reasonableness of a search of a dwelling pursuant to the Fourth Amendment, a part of the reasonableness inquiry involves the application of the common-law principle of "knock and announce." Wilson v. Arkansas, 514 U.S. 927, 929 (1995). Pursuant to this principle, a law enforcement officer has the authority to break open the doors of a dwelling, but he first ought to announce his presence and authority. Id. at 929, 935. However, this

requirement is flexible and legitimate law enforcement concerns over, inter alia, safety and the destruction of evidence justify dispensing with the announcement. Id. at 935-36.

In this case the officers had information that firearms were to be found on the premises. (SWA, ¶ 14.) They knew that Arbour and Dubreil had association with one Dean James who apparently had engaged in violent and threatening behavior. (Id., ¶ 10.) They further knew that quantities of cocaine were kept in accessible places and could be easily destroyed. (Id., ¶ 5 & p.9 "no-knock request.") The officers knew that Dubreil had a prior assault conviction. (Id., ¶ 16.) While they did not know Arbour's last name and therefore could not verify his criminal record, they did know Arbour fancied himself to be a preeminent drug dealer in the State of Maine (Id., ¶ 11) and that drug dealers frequently have firearms on their persons. (Id., ¶ 11 and p.9 "no knock request.") Given these circumstances, the affiant articulated a sufficient reasonable suspicion regarding the potential for violence and/or the destruction of evidence to satisfy the constitutional requirement of reasonableness pursuant to governing First Circuit precedent. United States v. Sargent, 319 F.3d 4, 9 (1st Cir. 2003). Given that the search comported with the Fourth Amendment, there is no "fruit of the poisonous tree" argument that attaches to the later statements made by Arbour.

Conclusion

Based upon the foregoing I recommend that the court **DENY** the motion to suppress.

NOTICE

> A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which *de novo* review by the district court is sought, together with a supporting memorandum,

within ten (10) days of being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to *de novo* review by the district court and to appeal the district court's order.

_____
Margaret J. Kravchuk
U.S. Magistrate Judge

Dated May 2, 2003

U.S. District Court
District of Maine (Bangor)
CRIMINAL DOCKET FOR CASE #: 1:02-cr-00073-DBH-2
Internal Use Only

Case title: USA v. DUBREIL, et al
Other court case number(s): None **Date Filed:** 10/09/02
Magistrate judge case number(s): None

Assigned to: JUDGE D. BROCK HORNBY
Referred to:

Defendant(s)

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Designation: Retained

Pending Counts **Disposition**

21:846=ND.F CONSPIRACY TO DISTRIBUTE COCAINE/COCAINE BASE
(1)

18:922G.F POSSESSION OF A FIREARM BY A FELON
(2-5)

18:924C.F USE OF FIREARM DURING/RELATING TO DRUG TRAFFICKING
(8)

Highest Offense Level (Opening)

Felony

Terminated Counts

None

Disposition

Highest Offense Level (Terminated)

None

Complaints

None

Plaintiff

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